

AFFIDAVIT

- 1) **AFFIANT/AGENT.** I, Kevin Backes, a Border Patrol Agent of the United States Border Patrol, Customs (“USBP”) and Border Protection (“CBP”), have been employed by the USBP/CBP for 22 years and am currently assigned to the Grand Forks Sector Prosecutions Unit.

Your affiant has reason and probable cause to believe that RODRIGUEZ -Marinelarena, Francisco (DOB: XX/XX/1976), illegally reentered the United States after being removed in violation of 8 U.S.C. § 1326(a)(1) and (b)(2).

- 2) **INITIAL ENCOUNTER.** On December 22, 2024, at approximately 7:30 PM, Grand Forks Sector Dispatch (KAK720) was contacted by North Dakota Highway Patrol Trooper Schatz to request assistance from a Border Patrol Agent. Initially, Border Patrol Agent (BPA) Johnson, of the Pembina Border Patrol Station, contacted Trooper Schatz and began the process of requesting records checks through KAK720. Since Trooper Schatz was in the Portal Station area of responsibility, the information for the call and records checks were turned over to Supervisory Border Patrol Agent (SBPA) Santizo once he came on duty at Portal Station.

SBPA Santizo contacted Trooper Schatz. Trooper Schatz stated she encountered two subjects in a 2016 black Dodge Ram 2500 pickup (Colorado Plate: BJDC07) she had stopped for failure to maintain a traffic lane in Alexander, North Dakota. Both the driver and RODRIGUEZ-Marinelarena, the passenger, had presented Mexican identification documents and could not communicate in the English language. Record checks indicated both subjects had criminal histories and had been removed from the United States.

Trooper Schatz advised that during the traffic stop she noticed some anomalies inside the vehicle. Both front seats and the steering wheel had been altered. Also, the subjects had indicated they were traveling from Colorado. Trooper Schatz decided to run her service K-9 around the vehicle. Trooper Schatz relayed that the K-9 indicated the presence of contraband and Sergeant Langer, who had joined Trooper Schatz, was going to inspect the vehicle for possible contraband. SBPA Santizo told Trooper Schatz that the Border Patrol would issue immigration detainees for the subjects, but would not take them into custody until the Highway Patrol had concluded its investigation.

At approximately 7:52 PM, SBPA Santizo was contacted by Trooper Schatz to notify that no contraband was found in the vehicle, and that they were transporting the subjects to the McKenzie County Law Enforcement Center. After the subjects arrived at the Law Enforcement Center, SBPA Santizo contacted the jail and requested to speak with RODRIGUEZ-Marinelarena.

Upon speaking with RODRIGUEZ-Marinelarena, SBPA Santizo identified himself as a United States Border Patrol Agent, and conducted an immigration inspection in the Spanish

language. RODRIGUEZ-Marinelarena stated that he was a citizen of Mexico and that he had no documents allowing him to be in the United States. When questioned as to when he most recently entered the United States illegally, he stated that it was approximately two years ago.

Both subjects were detained at the McKenzie County Law Enforcement Center in Watford City, North Dakota, until a Border Patrol Agent could arrive to take them into custody.

On December 23, 2024, at approximately 7:00 PM, BPA Lowry arrived at the McKenzie County Law Enforcement Center, placed RODRIGUEZ-Marinelarena into Border Patrol custody, and transported him to the Portal Border Patrol Station for processing.

- 3) POST ARREST INVESTIGATION.** Upon arriving at the Portal Border Patrol Station, RODRIGUEZ-Marinelarena was enrolled into NGI/IDENT, a computerized fingerprint identification system. The NGI/IDENT results returned with positive immigration and criminal history showing that the subject had been removed two (2) prior times.

RODRIGUEZ-Marinelarena is a citizen and national of Mexico.

4) IMMIGRATION HISTORY:

1. Arrest Date: November 4, 1998
Arresting Agency: USBP Deming, NM
Disposition: Voluntary Return
2. Arrest Date: May 27, 2005
Arresting Agency: USBP Deming, NM
Disposition: Voluntary Return
3. Arrest Date: April 14, 2006
Arresting Agency: USBP Deming, NM
Disposition: Voluntary Return
4. Arrest Date: March 7, 2008
Arresting Agency: USBP Deming, NM
Disposition: Voluntary Return
5. Arrest Date: June 26, 2009
Arresting Agency: USBP Deming, NM
Charge: Section 212(a)(7)(A)(i)(I) of the INA – Immigrant without an Immigrant Visa
Disposition: Expedited Removal. Removed to Mexico on July 03, 2009 through the Paso Del Norte Port of Entry in El Paso, TX.
6. Arrest Date: April 30, 2010
Arresting Agency: USBP Marfa, TX

Charge: Section 212(a)(9)(A)(ii) of the INA – Previously Removed and Aggravated Felony Conviction
Disposition: Reinstate Prior Order of Removal. Removed to Mexico on July 03, 2012, through the Brownsville, TX Port of Entry after completing a prison sentence.

5) CRIMINAL RECORD: RODRIGUEZ has two (2) prior criminal convictions.

1. Arrest Date: June 26, 2009
Arresting Agency: USBP Deming, NM
Charge: 8 USC 1325 - Entry without Inspection
Disposition: Guilty, sentenced to seven days of confinement.
2. Arrest Date: May 01, 2010
Arresting Agency: ICE Office of Investigations Presidio, TX
Charge: Aiding and Abetting Possession with Intent to Distribute Marijuana.
Disposition: Guilty, Aiding and Abetting Felony, sentenced to 30 months of confinement and five years of supervised release.

6) MIRANDA RIGHTS/CONSULAR NOTIFICATION. On December 23, 2024, BPA Lowry witnessed by SBPA Santizo notified RODRIGUEZ-Marinelarena of his Miranda Rights per Service Form I-214. RODRIGUEZ-Marinelarena acknowledged his rights by signing the Service Form I-214 and was willing to answer questions. RODRIGUEZ-Marinelarena admitted; he had been removed from the United States previously, he had reentered the United States illegally, he knew it was a crime to reenter after removal, and that he had been convicted of a felony.

BPA Lowry notified RODRIGUEZ-Marinelarena of his right to consular communication. RODRIGUEZ-Marinelarena declined to speak with a consular official.

No record could be found to indicate that RODRIGUEZ-Marinelarena has ever applied for or been granted permission to reenter the United States by the Attorney General or by his successor, the Secretary of the Department of Homeland Security.

In my experience, the above facts constitute a violation of 8 U.S.C. § 1326(a)(1) and (b)(2).
The foregoing is true and correct to the best of my knowledge and belief.



Kevin Backes
United States Border Patrol Agent

Sworn before me this ~~26th~~^{27th} day of December 2024, through reliable electronic means.



Alice R. Senechal
United States Magistrate Judge